

AMENDED IN SENATE APRIL 17, 2001

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 285

Introduced by Senator Soto

February 16, 2001

An act to add Section 366.4 to the Code of Civil Procedure, to amend Sections 215 and 9202 of the Probate Code, and to amend Section 14009.5 of the Welfare and Institutions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

SB 285, as amended, Soto. Medi-Cal.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health care services.

Existing law, with certain exceptions, requires the department to claim against the estate of a decedent, or against any recipient of the property of that decedent by distribution or survival, an amount equal to the payments for Medi-Cal services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less.

Existing law provides that one of the circumstances in which a claim may not be made is when there exists a surviving spouse, but only during the lifetime of that spouse.

This bill would delete the reference to the lifetime of the surviving spouse thereby extending the exception to any case where there is a surviving spouse, and would revise probate procedures to reflect that exception.

Under existing law, another of the circumstances in which a claim may not be filed is when there exists a surviving blind or permanently and totally disabled child.

This bill would clarify that the child may be of any age.

Existing law provides that any exemption that restricts the department from filing a claim against a decedent's property shall apply only to the proportionate share of the decedent's estate or property that passes to those recipients, by survival or distribution, who qualify for the exemption.

This bill would eliminate this limitation.

Existing law requires the department to waive its claim in whole or in part if it determines that enforcement of the claim would result in substantial hardship to other dependents, heirs, or survivors of the individual against whose estate the claim exists.

This bill would, instead, require that the claim be waived in whole or in part if the department determines that enforcement of the claim would result in undue hardship to the decedent's dependents, heirs, distributees, or survivors who have submitted an application for waiver or reduction of the claim. It would specify certain conditions under which undue hardship would be deemed to exist, as well as various other circumstances which must be considered in determining whether undue hardship exists.

This bill would require, with respect to Medi-Cal recipients who die on or after January 1, 2002, and subject to certain limitations and exceptions, that any recovery action brought by the Director of Health Services under these provisions be commenced within one year after the date of the death of the deceased Medi-Cal recipient.

The bill would also enact various administrative and judicial review requirements which would govern disputes concerning these claims.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 366.4 is added to the Code of Civil
- 2 Procedure, to read:
- 3 366.4. (a) Any recovery action by the Director of Health
- 4 Services against the estate of a deceased Medi-Cal recipient
- 5 pursuant to Section 14009.5 of the Welfare and Institutions Code
- 6 or against a recipient of the property of that decedent shall be



1 commenced within one year after the date of death of that
2 decedent.

3 (b) The limitations period provided in this section for
4 commencement of an action shall not be shortened, tolled, or
5 extended for any reason except as provided in any of the following
6 provisions that apply to the disposition of the decedent's estate:

7 (1) Part 4 (commencing with Section 9000) of Division 7 of the
8 Probate Code.

9 (2) Part 8 (commencing with Section 19000) of Division 9 of
10 the Probate Code.

11 (3) Part 3 (commencing with Section 21300) of Division 11 of
12 the Probate Code.

13 (c) For purposes of this section, "Medi-Cal recipient" means
14 a recipient of health care services under Chapter 7 (commencing
15 with Section 14000) or Chapter 8 (commencing with Section
16 14200) of Part 3 of Division 9 of the Welfare and Institutions Code.

17 (d) This section applies to actions brought by the Director of
18 Health Services under Section 14009.5 of the Welfare and
19 Institutions Code against the estate, or against a recipient of the
20 property of the estate of a Medi-Cal recipient who died on or after
21 January 1, 2002.

22 SEC. 2. Section 215 of the Probate Code is amended to read:

23 215. Where a deceased person has received or may have
24 received health care under Chapter 7 (commencing with Section
25 14000) or Chapter 8 (commencing with Section 14200) of Part 3
26 of Division 9 of the Welfare and Institutions Code, the estate
27 attorney, or if there is no estate attorney, the beneficiary, the
28 personal representative, or the person in possession of property of
29 the decedent shall give the Director of Health Services notice of
30 the decedent's death not later than 90 days after the date of death.
31 The notice shall include a copy of the decedent's death certificate.
32 The notice shall be given as provided in Section 1215, addressed
33 to the director at the Sacramento office of the director.

34 SEC. 3. Section 9202 of the Probate Code is amended to read:

35 9202. Not later than 90 days after the date letters are first
36 issued to a general personal representative, the general personal
37 representative or estate attorney shall give the Director of Health
38 Services notice of the decedent's death in the manner provided in
39 Section 215 if the general personal representative knows or has
40 reason to believe that the decedent received health care under

Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code. The director has four months after notice is given in which to file a claim.

SEC. 4. Section 14009.5 of the Welfare and Institutions Code is amended to read:

14009.5. (a) Subject to other provisions of this chapter, the department shall claim against the estate of the decedent, or against a recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received or the value of the property received by a recipient from the decedent by distribution or survival, whichever is less.

(b) The department may not claim in any of the following circumstances:

(1) The decedent was under 55 when services were received, except in the case of an individual who had been an inpatient in a nursing facility.

(2) Where there is any of the following:

(A) A surviving spouse.

(B) A surviving child who is under age 21.

(C) A surviving child of any age who is blind or permanently and totally disabled, within the meaning of Section 1614 of the federal Social Security Act (42 U.S.C.A. Sec. 1382c).

(c) (1) The department shall waive its claim if it determines that enforcement of the claim would result in undue hardship to the decedent's dependents, heirs, distributees, or survivors who have submitted an application for waiver or reduction of the department's claim. The existence of undue hardship shall be determined on the basis of published criteria that the state shall establish, consistent with federal laws and regulations.

(2) The department shall notify the attorney for the estate, or if there is no attorney for the estate, the personal representative of the decedent's estate, or if neither, the recipient of the decedent's property of the waiver provision and the opportunity for a hearing to establish that a waiver should be granted.

(3) Waivers shall be granted consistent with regulations that the department shall adopt to implement this section. The regulations shall, at a minimum, define undue hardship and shall consider criteria including, but not limited to, the following factors:

1 (A) The age, income, resources, and liabilities of the
2 decedent's dependents, heirs, distributees, or survivors.

3 (B) The length of time the dependent, heir, distributee, or
4 survivor lived with the decedent.

5 (C) The level and type of care provided by the dependent, heir,
6 distributee, or survivor that delayed or prevented institutional
7 placement of the individual.

8 (D) The dependent's, heir's, distributee's, or survivor's
9 employability.

10 (E) Whether the property is a homestead of modest value.

11 (F) Whether the property is part of a business, including a
12 working farm or ranch.

13 (G) When, but for erroneous information given by a
14 government agency, there would be no recovery claim on the
15 property.

16 (H) Standards of fairness and equity or other compelling
17 circumstances.

18 (d) It shall be considered an undue hardship when, in the case
19 of a claim on a decedent's home, any of the following persons are
20 residing in the home and have lawfully resided in the home on a
21 continuous basis since the date of the decedent's admission to the
22 medical institution, if applicable:

23 (1) A sibling of the decedent who was residing in the decedent's
24 home for a period of at least one year immediately before the date
25 of the decedent's admission to the medical institution.

26 (2) A son or daughter of the decedent who was residing in the
27 decedent's home for a period of at least two years immediately
28 before the date of the decedent's admission to the medical
29 institution, and who establishes that he or she provided care to the
30 decedent that permitted the decedent to reside at home rather than
31 in an institution.

32 (e) The following definitions shall govern the construction of
33 this section:

34 (1) "Decedent" means a beneficiary who has received health
35 care under this chapter or Chapter 8 (commencing with Section
36 14200) and who has died leaving property to others either through
37 distribution or survival.

38 (2) "Dependents" includes, but is not limited to, immediate
39 family or blood relatives of the decedent.

(3) For the purposes of this section, “health care services” shall not include services provided to the deceased beneficiary through the In-Home Supportive Services program, adult day health care programs, or Multipurpose Senior Services Program.

(f) For purposes of this section, the term “estate,” with respect to a deceased individual, shall include all real and personal property and other assets included within the individual’s estate, as defined for the purposes of California probate law.

(g) A dispute regarding the amount of the claim, the amount of the payments for the health care services, whether or not those services were received, or the value of the property received by a recipient from the decedent by distribution or survival, is subject to appeal by administrative law hearing or judicial review.

(h) Where an action is brought by the director pursuant to this section, it shall be commenced in accordance with Section 366.4 of the Code of Civil Procedure.

(i) Administrative law hearings conducted pursuant to this section shall be included in the delegation order with the State Department of Social Services’ Administrative Adjudication Division and the department shall adopt regulations implementing this section.

(j) Judicial review of any final decision of the department may be had by filing a petition for a writ of administrative mandate in accordance with Section 1094.5, and following, of the Code of Civil Procedure. In reviewing the department’s decision, the court shall exercise its independent judgment in factual determinations and on questions of law. The petition shall be filed within 120 days after receiving notice of the final decision of the department. If the applicant, within 30 days after receiving notice of the department’s final decision, requests that the department prepare a record of the proceedings, the time within which the petition is required to be filed shall be extended until at least 90 days after its delivery to the applicant.

The costs of preparation of the record shall be borne by the department. No filing fee shall be required for the filing of a petition pursuant to this section. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant shall be entitled to reasonable attorney’s fees and costs if he or she obtains a favorable decision.

1 (k) In any case where a hardship application or other appeal has
2 been filed, the department shall take no action to enforce a
3 recovery claim until the final determination of that application
4 including any administrative and judicial appeals.

5 (l) No interest shall accrue on any recovery claim made
6 pursuant to this section until a final adjudication of the claim has
7 been made.

8 *SEC. 5. The State Department of Social Services shall submit*
9 *an amendment to the state medicaid plan implementing the*
10 *amendments to Section 14009.5 of the Welfare and Institutions*
11 *Code made by Section 4 of this act.*

